

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY FREDIANELLI,

No. C-11-3232 EMC

Plaintiff,

v.

**ORDER RE JURY INSTRUCTION ON
PREJUDGMENT INTEREST**STEPHAN JENKINS, *et al.*,**(Docket Nos. 288, 291)**

Defendants.


Plaintiff has requested that the Court give a jury instruction on prejudgment interest. The request is hereby **DENIED**. While California Civil Code § 3302 does provide for an award of interest, *see* Cal. Civ. Code § 3302 (providing that “[t]he detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon”), it does not state that the interest amount is to be determined by a jury; nor does it state the date from which interest begins to accrue. Those issues are essentially covered by California Civil Code § 3287. Because the damages sought by Plaintiff are not certain, or capable of being made certain by calculation, *Fireman’s Fund Ins. Co. v. Allstate Ins. Co.*, 234 Cal. App. 3d 1154, 1173 (1991) (stating that “[d]amages are deemed certain or capable of being made certain within the provisions of subdivision (a) of section 3287 where there is essentially no dispute between the parties concerning the basis of computation of damages if any are recoverable but where their dispute centers on the issue of liability giving rise to damage”), § 3287(b) governs

1 rather than § 3287(a). Should Plaintiff prevail on the merits, then he may make a request to the
2 Court for prejudgment interest pursuant to § 3287(b). Such interest is at the Court's discretion.

3 This order disposes of Docket Nos. 288 and 291.

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5 IT IS SO ORDERED.

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7 Dated: October 17, 2013

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9 EDWARD M. CHEN
United States District Judge